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8 Attorneys for Plaintiffs, STEVE SHAPIRO  
9 and STEVE SHAPIRO MUSIC  
10

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13

14 STEVE SHAPIRO and STEVE SHAPIRO  
15 MUSIC,

16 Plaintiffs,

17 vs.

18 JUPITERIMAGES CORPORATION,

19 Defendant.

) Case No. 3:07-CV-5540 PJH

)  
) **DECLARATION OF STEVEN**  
) **SHAPIRO IN SUPPORT OF**  
) **PLAINTIFFS' OPPOSITION TO**  
) **DEFENDANT'S MOTION TO DISMISS**  
) **THE COMPLAINT OR, IN THE**  
) **ALTERNATIVE, FOR A STAY**

)  
) Hearing Date: January 9, 2008

) Time : 9:00 a.m.

) Location : Courtroom 3

20 I, Steven Shapiro, do hereby declare under penalty of perjury that the following is true and  
21 correct and I would testify to same in person if called upon to do so:

22 1. I am the plaintiff herein. I have personal knowledge of the matters stated herein and if  
23 called as a witness, could and would competently testify thereto.

24 2. I have been a Bay Area resident for the past thirty years. For the past thirty five years I  
25 have been a composer of original background music for film, TV, radio and video.

26 3. In that context and over the thirty five years I developed the Steve Shapiro Music  
27 Library which consisted of approximately 7,200 individual music tracks (solely consisting of music  
28 and rhythm, with no lyrics), all of which were titled and organized to reflect musical descriptions and  
specific visual images.

1           4.       These music tracks were utilized in the production of various types of audio-visual  
2 presentations as background music.

3           5.       As an example, if a visual image was of a scene in France, music that "sounded French"  
4 was connected to an audio impression and was located in the library through a key word. If the visual  
5 image was dancing in France, that additional audio impression would be located by key word. The  
6 same would apply if the dancing in France was in the rain.

7           6.       I started music lessons and played music on the flute and piano when I was five years  
8 old.

9           7.       I entered Brown University in 1964 at age 16, at which time I had been playing the  
10 piano and flute most of my life. I entered college to study science, but soon transferred to the Music  
11 Department. Brown had one of the first electronic music studios, which resulted in access to four-  
12 track tape recorders, high quality microphones, and one of the first Moog synthesizers in the world.

13          8.       As a student, I started writing music in the traditional fashion - composing each  
14 instrument's part note by note and writing it out in traditional musical notation. I wrote original pieces  
15 but also created my own arrangements of classical compositions by Vivaldi, Bach, Mozart, and others  
16 that could be played by fellow students.

17          9.       With access to the Brown studio, I recorded compositions and arrangements. If I made  
18 up a tune or a new arrangement, my fellow students would play the instruments. Although I did not  
19 know it at the time, the tracks I created over thirty years ago ultimately became the nucleus of the  
20 Steven Shapiro Music Library.

21          10.      These first tracks were recorded on quarter-inch analog tape, with several tracks on  
22 each tape and descriptions written on the tape box. That was my original filing system. I was not at  
23 that time thinking of these recordings as a "library", but merely exercises that helped me as a music  
24 student.

25          7.       In the studio I learned how to add more tracks "on top" of existing tracks to create a  
26 much bigger orchestral sound and how to add electronic sounds with the Moog synthesizer. It was the  
27 time of the revolution in the 1960's, when technology allowed the merging of classical, jazz and pop  
28 music.

1           8.       What happened as well was the meaning of "*writing*" music changed and became less  
2 bound to traditional notation. As jazz musicians had known how to do for years, all musicians were  
3 learning to improvise and create new music in the studio using the technology and working together.

4           9.       After graduating from Brown with a B.A. in music, I went to the Manhattan School of  
5 Music in New York for a Masters degree, where I continued to compose, arrange, and record as part of  
6 his advanced musical education.

7           10.      I entered the "music business" in 1970 when I was hired in New York City as a music  
8 editor at Ross Gaffney, a large organization providing sound for motion pictures, commercials and  
9 television. As a music editor, my job was to choose music for a piece of film and "edit" it to "fit" the  
10 image on the screen. Editing in the 1970's involved physically cutting a piece of analog tape so that  
11 musical score reflected and tracked pictorial events.

12          11.      With access to a recording studio at Ross Gaffney, I continued to write, produce and  
13 record music. I hired studio musicians to record music that I wrote and sometimes asked the  
14 musicians to improvise on certain chords to elicit a particular mood and feeling. Sometimes the  
15 musicians were paid a session fee, and sometimes it was just for fun. This process represented a  
16 change in the composing process. Not every note had to be written down. The process was more  
17 collaborative with various musicians adding their creative input and not just playing notes on a page.

18          12.      In 1975, I left New York City and moved to California. I have resided here  
19 continuously since that year. I became music director of Harcourt Brace Jovanovich, a large  
20 educational publishing company in San Francisco. In 1980, Harcourt Brace bought Sea World and  
21 moved to San Diego. I stayed in San Francisco and started Steve Shapiro Music Service.

22          13.      To supplement the library of my own compositions I bought various needle drop and  
23 buyout music libraries. These libraries were on 1/4" analog tape or vinyl. Later in that decade, CDs  
24 were available. I would use the library to try different types of music against picture and to get client  
25 feedback and would then usually compose and record an original piece of music based on the feel and  
26 style of the library track. The Library became an indispensable tool that allowed me to ascertain a  
27 client's needs and wishes.

1           14. As the Library expanded, I saw the need to find different musical styles quickly. With  
2 the advent of computer databases, this possibility became a reality with a database management  
3 program called Filemaker Pro. Before this, I simply had old-fashioned three ring binders with notes  
4 about each track.

5           15. With Filemaker, I could type classify all the tracks according to descriptive keywords.  
6 If I wanted to find "lyrical orchestral," all the tracks that contained music with that phrase or those  
7 words as descriptive keywords would come on the screen and tell him where I could find each track.

8           16. Of course, I needed to go through each track and input these descriptive phrases. This  
9 turned out to be an on-going process since it became obvious that the more detailed phrases each  
10 record contained, the better the database. So, over a period of years I would pull up a track and add  
11 more description to a particular track's list of keywords. The real power of the database was that it  
12 allowed me to put everything into one searchable database. All the commercial libraries and his  
13 original compositions were now all in one database.

14           17. As technology changed, the library was transferred from analog tapes to digital tapes  
15 (DAT), then to CDs, and finally to files on computer hard drives. With these changes the database  
16 needed to reflect where to find the various tracks on each new medium. – i.e. DAT tape number, CD  
17 number or computer file name.

18           18. As the year 2000 approached, there were fears that Filemaker Pro 2, which was used in  
19 1999, was not Y2K compliant. I upgraded it to Filemaker 3, as recommended. After Y2K passed, it  
20 turned out that Filemaker 2 was not affected by Y2K and he went back to Filemaker 2, mostly because  
21 I had gotten used to it and it seemed to do everything I wanted. Over the next few years, I upgraded  
22 Filemaker several times, stopping at Filemaker Pro 6.

23           19. In 2005, after years of planning, the Steve Shapiro Music Library was out on-line, using  
24 the Filemaker Pro 6 database.

25           20. By 2005, the library had over 7000 plus tracks from various sources, which included  
26 my own compositions, needle drop music libraries, buyout music libraries, and compositions that were  
27 given to him by other composers with the understanding that they would receive a needle drop fee if  
28 the track was ever used.

1           21. In late 2005 I received a phone call from Mike Bielenberg in Atlanta, Georgia, a Jupiter  
2 Images manager, stating that my "ship has come in". Mike explained that Jupiter Images, a publicly  
3 traded company, was starting an internet music sales company and wanted to buy my entire library for  
4 their new venture.

5           22. I told Mike Bielenberg that I did now own the rights to each track in the library, and  
6 that a substantial number were needle drops and buy-out tracks. I said I would have to pare down the  
7 library from 7000 and remove those compositions that belonged to other people. Through the use of  
8 the Filemaker database of 7000 tracks, I removed those tracks based on the Filemaker records.

9           23. The library was pared down to 2225 tracks and the Asset Purchase Agreement was  
10 signed.

11           24. Knowing the library had been winnowed down from 7000 tracks to 2225 tracks, to  
12 meet Jupiter's concern I might inadvertently transfer tracks to which I did not have rights, I agreed that  
13 one-half of the contract purchase price would be withheld in escrow for a year to cover any indemnity  
14 obligations.

15           25. It is not in dispute that for reasons that will be shown to be inadvertent and  
16 unintentional (which reasons have orally been explained to Jupiter), approximately 400 of the  
17 transferred tracks did not meet the warrantee and representation clause of the contract.

18           26. I will, of course have and will in the future meet my indemnity obligations as to these  
19 tracks as defined in paragraph 5.1 of the contract.

20           27. However I categorically deny that I had committed fraud or willful misconduct in  
21 inadvertently including the 400 tracks to which I did not have the right to transfer.

22           I declare under penalty of perjury pursuant to the laws of the State of California that the  
23 foregoing is true and correct and that this declaration was executed on December 19, 2007 at Oakland,  
24 California.

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28  


Steven Shapiro